IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

State of Rajasthan.
vs.
M/s. Taparia Construction Company.

S.B. Civil Misc. Appeal No.82/1997
against the order dated 27.8.1996
passed by District Judge, Bikaner
in Civil Misc. Case.122/1996.

Date : 19.10.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. N Mulchandani, Dy.GA, for the appellant.
Mr. BD Purohit, for the respondent.

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Heard learned counsel for the parties.

The present appeal is directed against the order dated 27.8.1996 by which the learned District Judge made the award dated 11.5.1996 rule of the Court. The Arbitrator passed the award of Rs.8,75,603.56p. with interest at the rate of 13% p.a. from 29.9.1989 till the final payment.

Brief facts of the case are that a road from Dantor to Godu in its portion of Jaggasar to Godu from Kms. 17/0 to 58/0 in length 41 kms. in Bikaner Zone was sanctioned by

the Government of Rajasthan vide order dated 27.10.1987. The total work cost was Rs.260 lakhs and against it technical sanction of total 41 kms. road is Rs.256.47 lakhs was accorded by the Additional Chief Engineer, Bikaner Zone vide order dated 29.2.1988 but at the time of tender under Government approval, the work was splitted into two zones – Kms. 17/0 to 38/0 (Zone-I) for one tender and Kms. 38/0 to 58/0 (Zone-II) for second tender. The tender work of Zone-I having a cost of Rs.1,06,97,522.63p. was awarded to the respondent/ claimant. As per the work order, it was to be started from 17.3.1988 and was to be completed upto 16.1.1989.

As per the claimant, the department was bound to provide a pucca track between Kms. 58/0 to 38/0 for transportation of the material by the contractor for II and III layers. However, the department failed to provide said pucca road and, therefore, the claimant had to use the kutcha road for transportation of material to the places for II and III layers in the portion from kms. 17/0 to 38/0. The respondent/contractor requested the department to provide the pucca road but that was not provided, therefore, the respondent time to time submitted bill for additional work along with the bills. All those bills were duly signed by the Junior Engineer, then Assistant Engineer, then Executive Engineer and ultimately, by the Additional Chief Engineer. Despite sanctions, the contractor was not paid the sanctioned amount of the additional work, therefore, the dispute arose between the parties and ultimately, Shri Narain Prakash Mathur, Retd.

Chief Engineer of Public Works Department (PWD) was appointed as Arbitrator by the consent of both the parties on 15.12.1992.

The respondent/claimant/contractor submitted his claim in detail and also produced several documents. The appellant also submitted its reply in detail and also produced several documents. Not only this, the issues were framed and the claimant produced 5 witnesses which included Retd. Chief Engineer PWD, Retd. Superintending Engineer PWD, Assistant Engineer PWD and two Junior Engineers. The appellant produced their witnesses who are 3 Executive Engineers and 1 Junior Engineer. The witnesses were even cross examined by the rival parties.

The learned Arbitrator passed the reasoned award on 11.5.1996. The learned Arbitrator held that as per condition no.7 of the contract and in terms of the rates provided in G-Schedule with all relevant documents, it is proved that the appellant department agreed for allowing the claim of the contractor of kutcha lane. The learned Arbitrator also held that the department specifically admitted that the department itself gave its financial sanction to the claim of the claimant upto the level of Additional Chief Engineer when the claim of the claimant/contractor was approved by the lower officers to the Additional Chief Engineer. The learned Arbitrator also observed that even the Additional Chief Engineer of the appellant categorically admitted that he is giving statement on the basis of the record that the financial

sanction was granted by the appellant to the respondent/claimant's bills for additional work. In view of the above, the award was passed by the learned Arbitrator.

The award was submitted for making it Rule of the Court upon which the appellant submitted its objections. The Civil Court held that the learned Arbitrator considered all the material available on the record as well as the arguments raised by the parties and the appellant failed to make out any case under Sections 30 and 33 of the Arbitration Act, 1940. The Civil Court, therefore, rejected the objections of the appellant and made the award Rule of the Court by order dated 27.8.1996. Hence, this appeal.

Learned counsel for the appellant submitted that there was no contract for making payment for any additional work to the respondent/contractor and the respondent was fully aware that he has to do all the work. The respondent knowing all the aspects of the matter, gave bid and his bid was accepted by the department and, therefore, the appellant department was not liable to pay the cost of the additional work.

I considered the submissions of learned counsel for the appellant and perused the record also.

It will be worthwhile to mention here that there is no allegation against the learned Arbitrator of malafide in fact or malafide in law. There is no allegation that the Arbitrator exceeded his jurisdiction or travelled beyond

the terms of the reference. It is also not the case of the appellant State that the Arbitrator has not considered the documents. Be it as it may be, the challenge to the award is on its merit on the basis of the interpretation, which according to the appellant, has been drawn from the evidence on the record. The appellant also could not dispute even before this Court that the respondent submitted the bills for additional work. Though the bills were submitted because of the reason that initially the work contract was one and because of the split in the contract, the respondent himself could not have used the pucca road and the department could not provide the pucca road to the respondent for the II and III layers in the portion falling in the work contract of the respondent/contractor i.e. from Kms. 17/0 to 38/0. The length between Kms. 17/0 to 38/0 is 20 kms. Not only this but the learned Arbitrator at page 38 of the order clearly observed that the department in past sanctioned the identical claims in few other cases also in Kolayat and Suratgarh areas and the transfer of Bituman has already been allowed to the claimant through kutcha lane, then what prevented the department from making payment for transportation of the material cost from Kutcha track for II and III layers to the contractor in the present work. The learned Arbitrator considered the terms of the agreement and condition no.7 also and thereafter held that there was no reason for the department to withhold the amount of the respondent/ contractor.

In view of the above, the objections raised by the appellant against the award do not fall in any of the clause under Section 30 or Section 33 of the Arbitration Act, 1940. Apart from the fact that on merits also, the learned Arbitrator has passed the award after considering the relevant agreement, G-Schedule and other material placed on record with oral evidence. Therefore, I do not find any illegality in the order passed by the Civil Court as well as in the award so far as the main claim of the respondent/claimant is concerned.

Learned counsel for the appellant then submitted that the learned Arbitrator has committed serious error of law in awarding interest. It is also submitted that even if interest can be awarded, then the award of interest at the rate of 13% p.a. is too excessive. Learned counsel for the appellant also submitted that the learned Arbitrator has awarded interest from 29.9.1989 which is not pendente lite interest but interest for the period prior to the reference of the dispute to the learned Arbitrator.

Learned counsel for the respondent/contractor submitted that the facts are glaring in this case. The respondent's bills were sanctioned by all the authorities but were not paid and, therefore, there is no reason for concession in favour of the appellant department. According to learned counsel for the respondent, the respondent was deprived of his amount of more than Rs.8.75 lakhs as back as in the year 1989. It is also submitted that at that time, the rate

of interest was even more than 18% p.a. Therefore, the learned Arbitrator rightly awarded interest after considering the arguments on the question of evidence.

I considered the submissions of learned counsel for the parties on this issue also.

It is apparent from the award itself that the Arbitrator was appointed on 15.12.1992, the award was passed on 11.5.1996 and the amount was not paid to the respondent/contractor because of the objections raised by the office of Chief Engineer and it is not a case of malafide on the part of the appellant because of the reason that the department after approval for the payment to the respondent upto the level of Additional Chief Engineer, when considered the matter at the level of Chief Engineer, was of the view that the payment for extra work is not allowable under the terms of the contract. In view of the above fact and looking to the interest awarded, this Court is of the view that the interest awarded to the respondent at the rate of 13% is too excessive and it should be only 9%. The award of interest pendente lite can be allowed but the award of interest prior to reference deserves to be set aside.

In view of the above discussion, this appeal is partly allowed, the award as such is upheld but the interest over the awarded amount shall be at the rate of 9% p.a. from the date of appointment of Arbitrator i.e. 15.12.1992 and

interest shall be 9% till the total amount is paid to the respondent.

No order as to costs.

(PRAKASH TATIA), J.

S.Phophaliya